IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 58 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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STATE OF GUJARAT & 3 - Appellant(s)
Versus
DILIPKUMAR RATILAL RAWAL - Defendant(s)

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Appearance :
GOVERNMENT PLEADER for Appellant(s) : 1 - 4.
MR KISHOR M PAUL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 23/03/2006

ORAL JUDGMENT

1.The State of Gujarat, through Secretary, General Administration Department, Sachivalaya, Gandhinagar and others have filed this Appeal From Order against the

order dated 29/10/2002 passed by the learned Civil Judge (S.D.), Morbi below Exh.5 application in Special Civil Suit No.89 of 2002.

1.1 Heard Ms.P.B.Sheth, learned AGP in this behalf.

1.2 The brief facts of the matter are as under:

1.3 Respondent Dilipkumar Ratilal Raval had filed Special Civil Suit No.89 of 2002 before the learned Civil Judge (S.D.), Morbi on 4/6/2002. In the said suit it was stated that the plaintiff has property situated at Sanala Road, Morbi in the scheme 215 MIG of Gujarat Housing Board being block no.M-637. The said block is 71.65 sq. mtr. Plaintiff is citizen of this country and owner of the said property.

1.4 It is the case of the plaintiff in the plaint that on 26/1/2001 a devastating earthquake measuring 6.9. Richter Scale had taken place in entire State of Gujarat, particularly in the area of Morbi. In view of this earthquake, over all Gujarat has suffered. As far as the property of the plaintiff, it has also suffered to a large damage. The plaintiff has filed application

that his property may be put in G-5 category. The plaintiff can claim maximum Rs.1,40,000 as damage in G-4 category in which Morbi is put as per the Government Regulation.

1.5 It is the case of the plaintiff that as per computer file no.14/25/88, the area of the house is admeasuring 420 sq. ft. Due to the earthquake, because of the damage, the plaintiff is not able to stay in the said house in this behalf. According to the plaintiff, he is entitled to get minimum damage of Rs.1,12,000/-.

1.6 It is the case of the plaintiff that the respondent authority has fixed the damage of Rs.2,800/- per sq. ft. and if that criteria is admitted, the plaintiff will be entitled to get Rs.1,40,000/- as damages.

1.7 It is the case of the plaintiff that for his neighbours who had faced damage as he had, for them the authority has fixed the damage of Rs.1,10,000/- to 1,25,000/-. Because of the said the plaintiff has filed application for re-survey and according to re-survey, as per the recommendation of Engineer, the plaintiff is entitled to receive Rs.1,09,292/- as

damages.

1.8 As the defendant failed and neglected to pay any amount, the plaintiff filed suit. Along with the suit, the plaintiff has produced document executed by the Gujarat Housing Board. The plaintiff has also claimed Rs.43,716/-. The plaintiff has produced assessment produced at Mark 20/1 dated 30/1/2002 wherein the Government has sanctioned amount of Rs.1,09,292/- in connection with damages of the amount of earthquake. On behalf of the State Government, the State Government did not file any reply. The State Government also did not produce any documents in this behalf.

2. In view of the same, the learned Trial Judge has passed the following order:

> “The Mamlatdar, Morbi is hereby directed that they should implement and act upon the certificate issued by them in favour of the plaintiff dated 30/1/2002 in the computer file no.14/25/88 and to start process of payment to the plaintiff immediately. The first installment should be paid by the Mamlatdar to the plaintiff within the period of

sixty days from the date of receipt of this order to the plaintiff."

2.1 Being aggrieved and dissatisfied with the aforesaid order of the learned Judge, the Appeal From Order No.58 of 2004 was filed before this Court somewhere on 28/7/2003. The Government has also filed Civil Application for stay. This Court has passed an order on 27/9/2004 and admitted the appeal and placed the appeal for hearing with Appeal From Order No.318 of 2004. This Court has also issued Rule in Civil Application and granted stay as regards appeal is concerned.

3. It may be noted that this matter to be heard with Appeal From Order No.318 of 2004. I have already heard this matter together.

4. I have gone through the order passed by the learned Trial Judge in this behalf. I have gone through the averments made by the plaintiff. It may be noted that defendant has not filed any reply in this behalf. The learned Trial Judge has simply relied upon the certificate issued by by the Mamlatdar, Morbi. The

respondents have not been able to prove as to whether the certificate issued by the Mamlatdar, Morbi in computer file no.14/25/88 is legal or illegal in this behalf.

5. In view of the same, there is no substance in the Appeal From Order filed by the State of Gujarat. The learned AGP has tried to assail the appeal and stated that Appeal From Order is required to be allowed.

6. On the other hand, Mr.Paul, learned advocate has stated that in this case, when the basic facts are admitted and the defendant has not been able to file reply before the Trial Court, the learned Judge has ordered that the plaintiff is entitled to all the benefits of damages because of earthquake. Earthquake had taken place in January 2001. Order was passed on October 2002. We are almost in March 2006.

7. In view of the fact that there is no dispute that the plaintiff is owner of the house. There is no dispute about earthquake took place. There is no dispute that Government has issued certificate by which the plaintiff is entitled to get Rs.1,09,292/-.

8. First if the arguments of the learned AGP has been accepted, it has been stated that this Court should set aside the order and remand the matter to the Trial Court for fresh decision. In ordinary matter, I would have accepted such argument. However, looking to the peculiar facts of the case, where facts are admitted namely plaintiff is the owner of the house. Earthquake took place in Gujarat on 26/1/2001 and even the Government has also issued certificate after examining the same, held that plaintiff is entitled to receive Rs.1,09,292/- and after 2001, the plaintiff is not getting money. In view of the above facts and circumstance of the case, I dismiss the appeal from order of the Government in this behalf. However, with a view to safeguard the interest of appellant, the plaintiff will file undertaking before the Trial Court that if he will lose the main suit, he will return the amount in question.

9. In view of the same, I do not see any reason to interfere with the matter in this behalf. I request the learned Trial Judge, that this being a matter of the year 2002, hear and dispose of the said suit as

expeditiously as possible preferably by 30/7/2006.

10.In view of the same, Appeal From Order is dismissed.

(K.M.MEHTA, J.)

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